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S 805294

BEFORE THE SOLE ARBITRATOR UNDER THE
.IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

ER Marks, Inc.
2nd Floor Bancroft building
3411 Silverside Road
Concours Plaza, Wilmington,
Delaware 19810 USA
Phone: (484) 701-6771
Fax: (484) 701-1021
E-mail: jessica.halbert@qvc.com

And

QVC, Inc.
Studio Park
1200 Wilson Drive, West Chester
Pennsylvania, USA
Phone: (484) 701-6771
Fax: (484) 701-1021
E-mail: jessica.halbert@qvc.com

(COMPLAINANTS)

VERSUS

Development Services
C/O Telepathy, Inc.
PO Box 1077, Washington
District of Columbia 20008 USA
Phone: +1.2022349800
E-mail: admin@telepathy.com

(RESPONDENT)

AWARD

THE PARTIES

The Complainants in the present proceedings are **QVC, Inc.** Studio Park, 1200 Wilson Drive, West Chester Pennsylvania USA and **ER Marks, Inc.** 2nd Floor, Bancroft building, 3411 Silverside Road, Concors Plaza, Wilmington, Delaware 19810 USA, ER Marks, Inc. Is a wholly owned subsidiary of QVC, Inc.

The Complainants in these proceedings are represented through their authorised representative:

Jeffrey H. Epstein & Sujata Chaudhri of
Cowan, Liebowitz & Latman, P.C.
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The respondent in this proceeding is Development Services, C/O Telepathy, Inc., PO Box 11077, Washington, District of Columbia 20008, US.

The respondent in these proceedings is represented through their authorised representative:

Legasis Partners
Advocates & Solicitors
38A&B, 3rd Floor, Jolly Maker Chambers II,
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THE DOMAIN NAME AND REGISTRANT

The domain name in dispute is <qvc.co.in>. According to the WhoIs search utility of .IN Registry, the Registrar of the disputed domain name <qvc.co.in>, with whom the disputed



domain name <qvc.co.in> is registered is Development Services C/O Telepathy, Inc. PO Box 11077, Washington, District of Columbia 20008, US.

PROCEDURAL HISTORY:

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainants, regarding the dispute over the domain name <qvc.co.in>.

.In Registry has supplied the copy of the Complaint and Annexures to the Arbitrator.

In accordance to the Rules, on 15.2.2012, the Arbitrator sent an email to the parties informing them about his appointment as an Arbitrator.

Thereafter on 15.2.2012, itself the Arbitrator sent an email to Complainants requesting to supply the copy of the complaint with annexures to the Respondent and in case if they have already served it, then to provide the details of service record.

In accordance with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 15.2.2012 with the instructions to file his say latest by 01.03.2012.

On 15.2.2012 only, the Arbitrator received an email from Telepathy, Inc. the Respondent, stating as follows,

“if you are inquiring about one of the domain names registered to the Telepathy, Inc. please use the securedoffcers.com service to submit your inquiry. We do not respond to unsolicited domain inquires sent to this email address.”

Thereafter, on 17.02.2012, the Arbitrator received email from Nat Cohen, President, Telepathy, Inc., the Respondent, stated that the respondent is in receipt of two copies of Annexes 7-16 of the qvc.co.in complaint and has not received the Complaint or Annexes 1-6 and requested the counsel of the Complainants to send them at the earliest.

On 17.02.2012, the Arbitrator received another email from the Counsel of the Complainants, informing about the details of the service of the copy of the Complaint to the Respondent. According to this mail, copy of the complaint was duly sent to the Respondent.



On 23.02.2012, the Arbitrator received another email from the Counsel of the Complainants, which indicated that there were some talks going on about the transfer of the domain name from Respondent to the Complainants.

On 23.02.2012, the Arbitrator received email from the Counsel of the Complainants, resending the above said mail of 22.02.2012 to the Respondent because its delivery failed earlier.

On 23.02.2012, the Arbitrator received an email from the Respondent, showing the willingness to transfer the disputed domain name to the Complainants.

On 14.03.2012, the Arbitrator sent an email to parties directing Respondent to file its reply within 7 days and also directed the parties to file the settlement documents before the Tribunal in case they resolve the matter amicably.

On 15.03.2012, the Arbitrator received an email from the Counsel of the Complainants, stating that settlement negotiations between the parties have ceased and requested for an early decision.

On 15.03.2012, the Arbitrator received another email from the Respondent, stating that they will file their reply within 7 days as Complainants no longer wish to pursue settlement in the matter.

On 20.03.2012, the Arbitrator received an email from the Counsel of the Respondent, stating that they represent the respondent. The Counsel of the Respondent has filed various documents as exhibits in support of his contentions.

On 28.03.2012, the Arbitrator received an email from the Counsel of the Complainants Sujata Chaudhri, stating that they would like to file a rebuttal to the response filed by the Respondent.

On 03.04.2012, the Counsel of the Complainants were given 3 days to file a Rejoinder.

On 04.04.2012, the Arbitrator received an email from the Counsel of the Respondent, stating that they are the authorised representatives of the Respondent and requested to receive all communications in relation to the disputed domain name.



On 05.04.2012, the Arbitrator received the Rejoinder (Rebuttal) filed by the Counsel of the Complainants. The Counsel of the Complainants have filed various documents as exhibits in support of his contentions. Also the Counsel of the Complainants have attached the proof of service of the Rejoinder (Rebuttal) to the Counsel of the Respondent.

On 06.04.2012, the Arbitrator received an email from the Counsel of the Respondent confirming the receipt of Part 1, 2 & 3 of the emails forwarding the Complainant's rebuttal and stating that they have not received Part 4 & 5 of the emails. It was also stated that the Complainant's rebuttal consists of additional new material and in view of the same they reserves their right to file a response to the Complainant's rebuttal upon receipt of the entire Complainant's rebuttal. Also the counsel of the Respondent asked the permission of the Arbitrator to allow the Respondent to file a response to the Complainants rebuttal.

On 10.04.2012, the Arbitrator received, an email from the Counsel of the Respondent, the rejoinder along with all the exhibits and copies of cases relied on by the Respondent, stating that a hard copy is also sent to .INREGISTRY and complainant's counsel by courier.

On 11.04.2012, the Arbitrator received an email from the Counsel of the Respondent, stating that a hard copy of the Respondent's Rejoinder has also been forwarded to the Arbitrator at his address.

On 11.04.2012, the Arbitrator received an email from the Counsel of the Complainant, stating that the rejoinder of the Respondent at page 16 states that initially it was willing to transfer the disputed domain name "QVC.CO.IN" to Complainants because a negative decision "would have tarnished the Respondent goodwill and reputation in the web/internet world." But the Complainants did not agree to the said transfer at that time because it was their understanding that to accept a transfer Complaint was to be removed, which was something they did not want to do.

On 12.04.2012, the Arbitrator received an email from the Counsel of the Respondent, taking strong objection to the complainants email dated 11.04.2012 and stating that the conduct of the Complainants is dishonest and fraudulent.

On 13.04.2012, the Complainants sent an email stating that the language used by the Respondent in their earlier email was derogatory and harsh and for which such behaviour of the Respondent was condemned.

On 13.04.2012 itself, the Respondent apologised for the harsh and offensive language used by it and assured that such behaviour will not be repeated again.

In between the Tribunal received Rejoinder to the Complainant's Rebuttal on behalf of the Respondent via post.

On 17.04.2012, the Tribunal addressed an email to both the parties stating that such harsh language used in the emails exchanged between them is against the INDRP Rules and Policies and is detrimental to the interest of justice. It was also stated in the said email that the Respondent had not taken a prior permission from the Tribunal to file its Rejoinder to the Complainant's Rebuttal and hence the Tribunal may not take such on record.

On 17.04.2012, the Respondent through an email said that the Respondent's Rejoinder shall be taken on record as few new pleas and material were placed on record by the Complainants in their Rebuttal.

On 18.04.2012, the Complainants objected to the Rejoinder to the Complainant's Rebuttal on behalf of the Respondent on the sole ground that no prior permission was taken from the Tribunal by the Respondent to file the same.

I have perused all the record and Exhibits.

FACTUAL BACKGROUND:

COMPLAINANT'S

The Complainants has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint:-

The Complainants are QVC, Inc. and ER Marks, Inc. ER Marks, Inc. is a wholly owned subsidiary of QVC, Inc. QVC, Inc. was founded in 1986 in the United States and extended its reach gradually internationally first to Europe and then to Asia.



QVC, Inc. and its affiliated companies offer direct response television retail shopping primarily via television, cable, satellite and digital terrestrial broadcasts, as well as via Internet and through mobile devices.

QVC, Inc. owns the QVC Mark outside the United States and ER Marks, Inc. is the owner of the QVC Mark in the United States. ER Marks, Inc. acquired these marks from QVC in 2003.

Complainants own rights in the QVC Mark in approximately forty (40) countries and jurisdiction all over the world, including India, the United States and the European Union. In the United States, the first registration of the mark QVC, namely, Reg. No. 1,455,889, issued in 1987. This registration issued in the name of QVC, Inc. and was assigned to its subsidiary ER Marks, Inc. in 2003. In India, Complainant, QVC, Inc. owns registrations for the mark QVC, namely, Registration Nos. 1796552, 1796547 and 1796553.

Complainant registered the domain name IQVC.COM in the year 2000. Subsequently, in 2001, it registered the domain name QVC.COM. In addition to the domain names IQVC.COM and QVC.COM, Complainant either directly or through its affiliated companies, owns top-level domain names such as QVCUK.COM and country- code domain names such as QVC.DE. All these domain names resolve to active web sites on which Complainant offers its retail shopping services. Moreover, QVC Mark appears on each of these web sites.

RESPONDENT:

The Respondent is Development Services, C/O Telepathy, Inc. a company incorporated under the laws of the United States of America carrying on varied businesses including providing search engine services, web development services, online (over the internet) marketing, advertising and promotions. The Respondents operates the deal aggregator website www.dealmagic.com among other business ventures.

The disputed domain name qvc.co.in was registered on 4 April, 2007 as per the Whois Database by the Respondent.

PARTIES CONTENTIONS:

A. COMPLAINANT

The Complainant contents as follows in his Complaint:

- i. The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.



- ii. The Respondent's has no right or legitimate interest in respect of the domain name.
- iii. The Respondent's domain name has been registered or is being used in bad faith.
- iv. The Complainants claims that QVC, Inc. was founded in 1986 in the United States. The Company grew in United States and extended its reach internationally, first to Europe and then to Asia, launching in the United Kingdom in 1993, in Germany in 1996, and in Japan in 2001 and recently in 2010, QVC set up operations in Italy.
- v. The Complainants claim that QVC, Inc. and its affiliated companies in United Kingdom, Germany, Italy and Japan offer direct response television retail shopping primarily via television, cable, satellite and digital terrestrial broadcasts, as well as via internet and through mobile devices.
- vi. The Complainants claim that over 22 years of history, they with their affiliated companies have handled over a billion and a half phone and internet transactions and have shipped more than 2 billion packages to over 50 million customers on 3 continents.
- vii. The Complainants claim that the goods sold by them and its affiliated companies are sourced from numerous countries all over the world, including India. Sourcing from India first began in November 2000, much prior to registration of the disputed domain name. In April 2008, the Complainant opened its sourcing facility in India under the name QVC India, Ltd.
- viii. The Complainants claim that they own the QVC Mark outside the United States and ER Marks, Inc. is the owner of the QVC Mark in United States. Also Complainants own rights in the QVC Mark in approximately Forty (40) Countries and jurisdictions all over the world, including India, the United States and the European Union, which includes Twenty - Seven (27) member states, among them the United Kingdom and Germany.
- ix. The Complainants claim that first registration of the mark QVC was issued in 1987, two decades prior to registration of the disputed domain name. In India, also the complainants own the registration for the QVC Mark.
- x. The Complainants claim that at the time of filing of the present Complaint, the disputed domain name does not resolve to an active web site.
- xi. The Complainant claims that the disputed domain name is an instrument of fraud and deception and its registration is causing irreparable loss and injury to the Complainant's reputation and goodwill.



- xii. The Complainant as such has filed the present complaint praying therein to transfer the disputed domain name in its favour and award cost.

B. The Complainants has filed the following documents as Annexures along with their Complaint:

- i. Copy of the INDRP.
- ii. Screen shots of the web site located at www.qvc.com showing some of the goods sold by QVC, Inc.
- iii. A photocopy of Registration and of the Notice of Acceptance of the renewal and declaration of use.
- iv. Photocopies of registration and renewal certificates of Complainants, QVC, Inc.'s, USA registrations of the QVC Mark.
- v. Photocopy of CTM registration of QVC Mark.
- vi. Photocopies of certificates of registration of Indian registrations.
- vii. Copies of WhoIs records for domain names QVC.COM and IQVC.COM.
- viii. Screen shots of the home page of the web site to which the domain names QVC.COM and IQVC.COM resolve.
- ix. Copies of WhoIs records for some country code domain names owned by QVC, Inc.
- x. Printouts from the web sites located at www.qvcuk.com and www.qvc.de.
- xi. WhoIs record for QVC.CO.IN.

C. RESPONDENT:

The Respondent has contended the following in the Reply to the Complaint filed by him on 20.02.2012:

- i. The Respondent submits that it is a company incorporated under the laws of United States of America carrying on varied businesses including providing search engine services, web development services, online (over the internet) marketing, advertising and promotions. The Respondent operates as the deal aggregator website www.dealmagic.com among other business ventures.
- ii. The Respondent submits that the disputed domain name www.qvc.co.in was registered on 4 April, 2007 as per the Whois Database by them.
- iii. The Respondents alleges it has used the website under the said domain name openly and extensively since 2007.



- iv. The Respondent alleges that it has used and intends to use the disputed domain name in respect of a website offering search engine services and advertising services.
- v. The Respondent claim that the Complainants cannot claim any monopoly in QVC because Complainants had no trademark registered for QVC when the disputed domain name www.qvc.co.in was registered in 2007. The Respondent also claims that there are many other corporations apart from the Complainants domain name in respect of their websites.
- vi. The Respondent claim that there are other companies other than the Complainants which are using QVC have applies/ registered QVC as a trademark which co-exists without any likelihood of confusion. The Respondent also claims that QVC is used as a short form for hundreds of different purposes.
- vii. The Respondent claims that services offered by the Complainants is related to completely different services of direct response television retail shopping, whereas Respondents domain name www.qvc.co.in provides varied businesses including providing search engine services, web development services, online (over the internet) marketing, advertising and promotions.
- viii. The Respondent claims that the Complainants have failed to provide any details of use of the alleged mark in India whereas the Respondents are using the website under the said domain name www.qvc.co.in prior to the Complainants registration of QVC in India. The Respondent also claims that the Complainants have not used QVC in India and are trying to seek a mere monopoly.
- ix. The Respondent claims that it has been using the disputed domain name from the date of its acquisition and further allege that the Complainant did not raise any objection during 'Sunrise Period' which was made available under INDRP for trademark proprietors against such registrations that they think would infringe their trademark.
- x. The Respondent submits that it has all the right and legitimate interest in the domain name and it has used the same in good faith and not for the purpose of fraud.
- xi. The Respondent further submits that the Complainant has the intention to grab the domain name of the Respondent and reverse hijack the domain name of the Respondent.

D. The Respondent has filed the following documents as Exhibits along with its response:

- i. Extract of Respondent's Webpage.



- ii. Sample extracts of the online status report (obtained from the Indian Trademark registry's database) of the Indian Trademark registration/ applications for QVC in the name of companies other than the Complainants.
- iii. Extracts from various online dictionary pertaining to abbreviations/ acronyms for QVC.
- iv. Web pages of other parties using QVC as part of their domain names.
- v. Extracts of the online status reports (obtained from the Indian Trademark registry's database) for the Complainant's Indian registrations which evince that QVC was proposed to be used by the Complainants on March 17, 2009.
- vi. Copy of the extract of the Complainants Indian Company's master data obtained from the website of Ministry of Corporate Affairs.
- vii. Copy of Reserve Bank of India's master Circular pertaining to liaison offices.

E. The Complainants filed their rejoinder on 05.04.2012 and contended the following:

- i. The Complainants claim that it is a typical practice in USA not naming the State of Incorporation of the Company and in the absence of any evidence credence should not be given to the Respondent's claim.
- ii. The Complainants contend that an internet search for Respondent tells a different story about the Respondent's business, which suggests that Respondent's business, is to purchase generic domain names.
- iii. The Complainants contend that they had established all the three criteria in paragraph 4 of the INDRP.
- iv. The Complainants further state that, under the INDRP, panellists have held that Complainants are not required to demonstrate rights in India or show that they have used the QVC Mark in India at the time Respondent acquired the disputed domain name.
- v. The Complainants claim that they have settlement agreement with the QVC Realty that does not allow QVC Realty to use the mark without the word REALTY.
- vi. The Complainants state that as per the WIPO Panel Views on UDRP Questions, states that, "*the test under the UDRP would typically involve a straightforward visual or aural comparison of the trademark with the alphanumeric string in the domain name.*"
- vii. The Complainants further state that Respondent has mischaracterized facts regarding ownership of the QVC Mark. There is a unity of control of the Mark, as



the Mark is owned by QVC, Inc. and ER Marks is wholly-owned subsidiary of the former.

- viii. The Complainants state that Respondent is not making legitimate or non-commercial use of the domain name. Further it is stated that the Respondents search engine takes the user to a page that has sponsored links and takes users to the pages of Complainants competitors. This is evidence of bad faith.
- ix. The Complainant states that the Respondent overreaching statement regarding its alleged legitimate use of the disputed domain name have no weight, as in fact, if a user were to type QVC.CO.IN in a browser, a query is generated whether the user is looking for QVC.COM, which is Complainant's website.
- x. Further Complainants state that it is impossible that Respondent, a company incorporated and doing business in USA does not know about QVC, Inc., a country in which QVC, Inc.'s presence is ubiquitous.
- xi. The Complainant alleged that the Respondent knew that it acquired the disputed domain name in bad faith because as soon as the Complaint was filed, Complainants authorised representative received a phone call from Mr. Cohen, President of the Respondent that they are ready to settle the matter by transferring the disputed domain name to Complainant without any consideration. It is further alleged that if Respondent had a legitimate business with years goodwill behind it, Respondent would not have been so eager to settle the matter.
- xii. The Complainant further states that Whether or not Respondents was aware of Indian rights is immaterial. Respondent is a US entity and had to be aware of QVC, Inc's presence in the US.

F. The Complainants have filed the following documents as Exhibits along with their Rejoinder:

- i. Letter written by Nat Cohen, Respondent's President, which suggests that Respondent's business is to purchase generic domain names.
- ii. Copy of QVC, Inc's corporate brochure.
- iii. McAfee, Inc. Chen Shenglu, INDRP/029 (January 12, 2007)
- iv. Printout from Acronym Finder.
- v. Printout from the web site of the national Arbitration Forum to demonstrate Complainant's enforcement efforts in regards to the QVC Mark.
- vi. Yurman Studio, Inc v. John Melnicki, FA0907001272698 (Nat. Arb. Forum, August 19, 2009)



- vii. ER Marks, Inc. and QVC, Inc. v. Masanori Takani, FA117001398216 (Nat. Arb. Forum, September 5, 2011) and ER Marks, Inc. and QVC, Inc. v. Janice Liburd, FA1008001341427 (Nat. Arb. Forum, September 29, 2010)
- viii. Printouts from Respondent's web site.
- ix. Current printout from web site.
- x. Copies of email correspondence of Complainant's representative and Mr. Cohen.

DISCUSSIONS AND FINDINGS:

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above fair opportunity has been given to both the Parties to file their contentions and after perusal, the following Arbitration proceedings have been conducted.


Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable"*

In the present circumstances, the decision of the Arbitrator is based upon the contentions and evidence filed by both the parties respectively and conclusion drawn from the same.

Having perused the submissions and documentary evidence placed on record, the Complainants have proved that they have statutory and common law rights in the mark "QVC."

Further, the Arbitrator is of the view that the Complainant has to satisfy all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- a. the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- b. the Registrant has no rights or legitimate interests in respect of the domain name; and
- c. the Registrant's domain name has been registered or is being used in bad faith.



BASIS OF FINDINGS:

The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainants contend in the complaint that the domain name of the respondent i.e. <www.qvc.co.in> is identical and confusingly similar to QVC, their mark and domain names associated like <www.qvc.com>.

It is further stated that the Complainants are the registered proprietor of the “QVC” mark in approximately forty (40) countries including India, USA, UK and the European Union which includes twenty-seven (27) member states, among them the United Kingdom and Germany.

After analyzing the trademark of the Complainant’s “www.qvc.com” and the disputed domain name <www.qvc.co.in>, the Tribunal is of the opinion that the Respondents Mark is identical to Complainants Mark because it incorporates the mark in its entirety. Mere difference and distinguishing factor between them is country code top level domain name .IN. Whereas, both of them are phonetically similar and are pronounced exactly in the same manner.

The Tribunal is of the opinion that the disputed domain name is confusingly similar to the Complainant’s domain name as it incorporates the disputed domain name in its entirety. It is well recognized that incorporating a mark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant’s Mark.

This proposition was also upheld in the following cases:

1. Lego Juris A/S v. Robert Martin, INDRP/118, it has been held that domain name LEGO.CO.IN held identical and confusingly similar to complainant’s LEGO Mark, except for TLD .CO.IN identifier. The TLD “can be disregarded for purposes of assessing similarity of the domain name to the trademark”.
2. Dell India v. Raj Kumar, INDRP/249, it has been held that Complainant has established proprietary rights over the mark DELL by showing its registration in various countries. Furthermore, Complainant has been able to show its penetration of global markets for rendering computer services.

The Tribunal further notes that the Respondent’s domain name is created by mere deletion of “.com” and addition of cCTLD “.co.in” in the end. Such is not sufficient to make the domain name distinct and hence the disputed domain name is confusingly similar to the Complainant’s Trademark.



The Registrant has no rights or legitimate interests in the respect of the domain name

It is clear that once a Complainant makes a prima facie case, then the burden shifts to the Respondent to provide evidences to establish rights or legitimate interests in the disputed domain name.

This proposition was also upheld in the following cases:

1. Croatia Airlines d.d. v. Modern Empire Internet Ltd, WIPO case No. D2003-0455, where it was held that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of proving rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4 (a) (ii) of UDRP.
2. Hanna- Barbera Productions, Inc. Vs. Entertainment Commentaries, FA 741828 (National Arbitration Forum, September 25, 2006), where it was held that the Complainant must first make a prima facie case showing that the Respondent does not have rights or legitimate interests in the subject domain name. If the Complainant satisfies its burden, then the burden shifts to the Respondent to show that it does have rights or legitimate interests in the subject domain name.

The Tribunal determines that the Complainants have made positive assertions and concrete evidences making a prima facie case showing that the Respondent does not possess rights or legitimate interests in the disputed domain name. Hence, the burden shifts on the Respondent to prove that it has rights or legitimate interests in the subject domain name. Whereas the Respondent has not discharged the onus positively, which had shifted upon him as the Respondent neither put forth and nor has provided such evidence, except that he has only made bald assertions which will be clear from the following:

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*

The Complainants have contended that Respondent does not have any rights or legitimate interest in the domain name because Respondent has not demonstrated any preparations to use the domain name or a name corresponding to the domain name in connection with bona



bonfide offering of goods or services for more than six years. The Complainants have relied upon the judgment of *Compagnie Gervais Danone v. Digitech Software Solutions*, INDRP/97 (June 27, 2009).

ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

The Complainants have contended that Respondent does not have any rights or legitimate interest in the domain name because Respondent is not commonly known by the disputed domain name. Moreover, upon information and belief, Respondent does not actually engage in any business or commerce under domain name. The Complainants have relied upon the judgment of *Morgan Stanley v. Keep Guessing*, INDRP/024 (June 27, 2007) to prove the point that Respondent has failed to show that he has a right or legitimate interest in the domain name, because Respondent is not known by the domain, nor it is his personal name.

iii) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

The Respondent has failed to file any document or evidence to show that they have been making legitimate or non commercial use of the domain name.

The Complainants have contended that the Respondent is not making a legitimate non-commercial or fair use of the domain name. According to Complainants, disputed domain name has been only adopted to capitalize on the fame and reputation of the Complainant's QVC Mark.

The Tribunal notes and concludes that as stated earlier the Respondent has not produced any substantial evidence to show its bonfide using or offering of goods and services in the said disputed domain name. The Tribunal believes that even if the Respondent has different working fields, then as of the Complainant, it may still lead to confusion to the internet users. This may lead to diversion of the potential customers and users of the Complainant to the website of the respondent.

The Tribunal also gets support to the finding from the following cases:



1. J.D. Edwards & co. Vs. Nadeem Bedar, WIPO Case D-2000-0693, wherein it was held that its irrelevant that domain name or trademark carry on business in different fields, when they are similar phonetically or in appearance.
2. Alliance & Leicester Plc Vs. Henao Berenice, WIPO Case D-2005-0736, it was held that use of the domain name by the Respondent should be bonafide without the intent to mislead internet users or consumers or to divert them to his website and without our intent to tarnish trademark of Complainant.

The Tribunal has come to the conclusion from the above facts and annexures that the Respondent is not making legitimate or fair use of the disputed domain name and hence concludes that he has no legal right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

The Registrant domain name has been registered or is being used in bad faith

The Complainants have contended that Respondent resides in the United States and QVC headquarters are also located in the United States. Accordingly, there is no question that Respondent does not know about QVC, Inc. and its business. According to the complaints, it is inconceivable that Respondent has any other purpose in registering and using that domain name, but to trade-off on the reputation of the QVC Mark.

Further, Complainants have contended that the Respondent has not made any use of the domain name. Non-use and passive holding is evidence of bad faith.

The Complainants have relied upon the judgment of *HSBC Holdings pls v. Hoomsn Esmail Zadeh, M-Commerce Ag*, Case No. L-2/5/R2 (March 24, 2007).

The Complainants have also relied upon the judgment of *F. Hoffmann-La Roche AG v. Domain Admin, PrivacyProtect.org/ Sergey Mishin*, Case No. D2010-1256 (WIPO, September 22, 2010) , it was held that, "*bad faith where a domain name points to a web site that offers search engine services and sponsored links to a complainant's competitors.*"

The Tribunal further concludes that the Respondent has registered the domain name in bad faith. It is also evident from the initial mails of the Respondent and the Complainants. The Respondent's email dated 15.2.2012 (detailed above) is self explanatory which shows that the Respondent is indulged in domain names business.



Subsequent emails dated 23.02.2012 and 15.03.2012 of both the parties, (detailed above) would further show that the Respondent was primarily interested in disposing off the disputed domain name and as such has been negotiating with the Complainant. It appears from the emails that their negotiations did not succeed which compelled the Respondent to contest the present complaint.

This Tribunal is of the view that if the Respondent has got registered the disputed domain name for bonafide purpose to run its own business, it would not have entered into any negotiations that too at the very initial stage of the present proceedings for its sale to the Complainants. Keeping this conduct of the Respondent in mind and also that the primary business of the Respondent appears to be sale and purchase of the domain names in the light of email dated 23.02.2012, the Tribunal holds that the disputed domain name was not registered for bonafide purpose and clearly shows the bad intention and bad faith in registering the disputed domain name.

DECISION

In view of the above facts and circumstances, this Tribunal holds that the Complainants have succeeded in their complaint.

.IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <qvc.co.in> to the Complainants. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 8th day of May, 2012.

Since the record was voluminous and the parties were exchanging documents and their pleadings sometimes without even seeking permission of the Tribunal, sufficient time was consumed and as such the passing of the award is delayed.



A.K. Singh

Sole Arbitrator

Date: 8th May, 2012